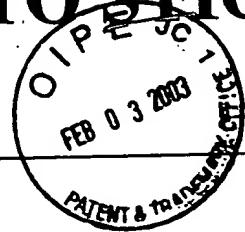


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TE:

PATENT
2750-1026P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: N.ALEXANDROV et al. Conf.: 5385

Appl. No.: 09/671,635 Group: UNASSIGNED

Filed: September 28, 2000 Examiner: UNASSIGNED

For: SEQUENCE DETERMINED DNA FRAGMENTS
AND CORRESPONDING POLYPEPTIDES
ENCODED THEREBY

TECH CENTER 1600/2900

APR 16 2003

RECEIVED

PETITION TO REVIVE PATENT APPLICATION

OFFICE OF PETITIONS

Assistant Commissioner for Patents
Washington, DC 20231

February 3, 2003

Sir:

In response to the Notice of Abandonment mailed December 3, 2002, which issued in connection with the above-identified application, this is a Petition to withdraw the "abandonment status" of the present application.

Statement of relief requested

The Notice of Abandonment of December 3, 2002 was apparently mailed for failure of Applicants to complete the filing requirements for the application as set forth in a Notice of Incomplete Response mailed September 19, 2001 and setting a date for reply of September 1, 2001.

Notwithstanding that Applicants could not possibly respond to

08/12/2003 JASON 00000001 501055 09671635
the Notice by its set due date, due to its late mailing,
01 FC:1460 130.00 DA

1/2003 JASON 00000001 501055 09671635
Ref: 00000001 130.00
1460

Applicants have previously responded to the Notice of Incomplete Response in as timely a fashion as possible; abandonment of the present application seems to have occurred as a result of an unfortunate chain of circumstances as explained below. Applicants request reinstatement of the present application to pending status.

Facts related to Applicants' response to the Notice of Incomplete Response

A Notice of Incomplete Reply was mailed on September 19, 2001, setting a non-extendable response date of September 1, 2001, eighteen days before the Notice was even mailed. Therefore, it was not possible for applicants to respond on time to avoid the abandonment of this application.

The history of this application is as follows:

On February 1, 2001, the USPTO issued a Notice to File Missing Parts in this application, setting a date for response of April 1, 2001, extendable to September 1, 2001. On June 1, 2001, Applicants filed an appropriate, complete response to the Notice to File Missing Parts. That response included all of the items required in the Notice to File Missing Parts; a signed declaration and power of attorney, two CDs (in lieu of the paper copy) and a CD representing the CRF of a Sequence Listing, and a petition for a two month extension of time. On September 19, 2001, the USPTO mailed a

Notice of Incomplete Reply, which set the period for response equal to that of the original Notice to File Missing Parts. The Notice of Incomplete Reply was sent due to a formal objection to usage of certain terms in the Sequence Listing. The complete statutory period for response to the Notice to File Missing Parts expired September 1, 2001.

In response to the Notice of Incomplete Reply, Applicants mailed a petition dated October 19, 2001 outlining the circumstances of this application, indicating Applicants' belief that the application had been inappropriately abandoned, requesting revival of the application from abandoned status and providing another copy of all of the items sent with Applicants' response to the Notice of Missing Parts. A copy of the petition of October 19, 2001 with a copy of the date-stamped postcard indicating receipt by the PTO, is attached hereto. It appears the PTO has misplaced this communication, as a Notice of Abandonment has now been received.

As evidence of the statements made above, Applicants are submitting herewith the following:

- 1) a copy of the Notice to File Missing Parts mailed February 1, 2001;
- 2) a copy of the Reply filed June 1, 2001;
- 3) a copy of the postcard receipt for the Reply which was date stamped on June 1, 2001;

- 4) a copy of the Notice of Incomplete Reply mailed September 19, 2001;
- 5) a copy of the petition dated October 19, 2001;
- 6) a copy of the postcard receipt for the October 19, 2001 petition which was date stamped on October 19, 2001;
- 7) a copy of amendment and CD transmittal letters as filed on October 19, 2001 along with the three (3) identical compact discs containing the corrected version of the Sequence Listing.

Applicants submit that the reply filed on June 1, 2001 was a "bona fide" attempt to respond to the original Notice to File Missing Parts of Nonprovisional Application mailed February 1, 2001 and therefore a new time period to respond should have been set in the Notice of Incomplete Reply, which time period should have been practical for compliance by Applicants. Applicants further submit that, regardless of the incorrect response date set by the Notice mailed September 19, 2001, Applicants' petition of October 19, 2001 and submission of a complete response to the Notice of Incomplete Reply on that date should have been sufficient to either maintain the application in pending status or return the application to pending status following expiration of the statutory period for reply to the Notice of Missing Parts.

Despite the above, Applicants submit herewith a copy of the Substitute Sequence Listing and Amendment as filed on

Appl. No. 09/671,635

October 19, 2001 to respond to the errors outlined in the Notice of Incomplete Reply dated September 19, 2001.

Applicants respectfully request that the application be immediately returned to pending status so that prosecution may resume with full consideration and entry into the record of the timely filed Reply.

If the U.S. Patent Examiner has any questions regarding the above matters, please contact Applicants' representative, Dr. Mark Nuell, Reg. No. 36,623 in the Washington metropolitan area at 703-205-8000.

It is submitted that no fees are required for filing this Petition, since abandonment occurred in error because of mistakes made on the part of the USPTO.

However, if deemed necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-1055 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By Mark J. Nuell
Mark J. Nuell, #36,623

RCS/DRN/BCF
2750-1026P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachments:

- a copy of the Notice to File Missing Parts mailed February 1, 2001,
- a copy of the Reply filed June 1, 2001,
- a copy of the postcard receipt which was date stamped on June 1, 2001,
- a copy of the Notice of Incomplete Reply mailed September 19, 2001,
- a copy of the 10/19/01 amendment submitting the Substitute Sequence - Listing which complies with 37 C.F.R. 1.822 and/or 1.833 as requested by the Notice of Incomplete Reply.
- a copy of the postcard receipt which was date stamped on Oct. 19, 2001
- Three (3) CDs with Sequence Listing (2 as the paper copy, 1 as the CRF)
- a copy of the Notice of Abandonment of Dec. 3, 2002

(Rev. 09/23/01)



COPY

PATENT
2750-1026P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: N. ALEXANDROV et al. Conf.: 5385

Appl. No.: 09/671,635 Group: UNASSIGNED

Filed: September 28, 2000 Examiner: UNASSIGNED

For: SEQUENCE DETERMINED DNA FRAGMENTS AND
CORRESPONDING POLYPEPTIDES ENCODED THEREBY

PETITION TO REVIVE PATENT APPLICATION

Assistant Commissioner for Patents
Washington, DC 20231

October 19, 2001

Sir:

In response to the Notice of Incomplete Reply mailed September 19, 2001, Applicants believe that the above-identified application has become abandoned. A Notice of Incomplete Reply was mailed on September 19, 2001 and sets a response date of September 1, 2001, eighteen days before the Notice was mailed. Therefore, Applicants believe that this application has become abandoned in error and respectfully petition to revive the application.

On February 1, 2001, the USPTO issued a Notice to File Missing Parts in this application, setting a date for response of April 1, 2001, extendable to September 1, 2001. On June 1, 2001, Applicants filed an appropriate, complete response to the Notice to File Missing Parts. That response included; a signed declaration and power of attorney, two CDs (in lieu of the paper copy) and CRF of a Sequence Listing and a petition for a two month extension of time. On September 19, 2001, the USPTO mailed a Notice of Incomplete Reply, which set as the period for response the end of the original time

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Appl. No. 09/671,635

period set in the Notice to File Missing Parts. That entire response period expired September 1, 2001.

As evidence of the statements made above, Applicants are submitting herewith the following:

- 1) a copy of the Notice to File Missing Parts mailed February 1, 2001.
- 2) a copy of the Reply filed June 1, 2001
- 3) a copy of the postcard receipt which was date stamped on June 1, 2001.
- 4) a copy of the Notice of Incomplete Reply mailed September 19, 2001.

Applicants submit that the reply filed on June 1, 2001 was a "bona fide" attempt to respond to the original Notice to File Missing Parts of Nonprovisional Application mailed February 1, 2001 and therefore a new time period to respond should have been set in the Notice of Incomplete Reply.

Regardless of the incorrect response date set by the Notice mailed September 19, 2001, Applicants are submitting herewith a Substitute Sequence Listing and Amendment to respond to the errors outlined in the Notice of Incomplete Reply.

If this application has indeed become abandoned, Applicants request that the application be immediately returned to pending status so that prosecution may resume with full consideration and entry into the record of the timely filed Reply.

COPY

Appl. No. 09/671,635

If the U.S. Patent Examiner has any questions regarding the above matters, please contact Applicants' representative, Dr. Mark Nuell, Reg. No. 36,623 in the Washington metropolitan area at 703-205-8000.

It is submitted that no fees are required for filing this Petition, since the error occurred because of a mistake on the part of the USPTO.

However, if deemed necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By Mark J. Nuell
Mark J. Nuell, #36,623

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachments:

a copy of the Notice to File Missing Parts mailed February 1, 2001.,
a copy of the Reply filed June 1, 2001,
a copy of the postcard receipt which was date stamped on June 1, 2001,
a copy of the Notice of Incomplete Reply mailed September 19, 2001,
an amendment submitting the Substitute Sequence Listing which complies with 37 C.F.R. 1.822 and/or 1.833 as requested by the Notice of Incomplete Reply.

(Rev. 09/23/01)